

REMARKS

The Office Action mailed February 5, 2009, has been carefully considered.
Reconsideration in view of the following remarks is respectfully requested.

Claim Objections

Claims 1 and 32 have been amended in accordance with the Examiner's suggestions in order to overcome the objections thereto.

Rejection(s) Under 35 U.S.C. §112, Second Paragraph

Claim 32 stands rejected under 35 U.S.C. §112, second paragraph, as indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Claim 32 has been amended to recite a system that includes a cable modem termination system (CMTS), configured to perform the process as set forth in the claim. It is respectfully submitted that CMTS is a known term and those of ordinary skill in the art would readily and without ambiguity understand the scope of the claim and determine whether or not they fall within its purview. Accordingly, withdrawal of the rejection of claim 32 under 35 U.S.C. §112, second paragraph, is respectfully requested.

Rejection(s) Pursuant to Judicially-Created Double Patenting

Claims 1, 25-27 and 32-35 stand provisionally rejected pursuant to the judicially-created doctrine of obviousness-type double patenting as allegedly being unpatentable over claim 1 of prior U.S. pat. no. 11/982,671. Submitted herewith is a duly-executed Terminal

Disclaimer overcoming said double patenting rejection. Withdrawal of same is respectfully requested.

Rejection(s) Under 35 U.S.C. § 102(e)

Claims 1, 25-27 and 32-35 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Hou (U.S. pat. no. 6,898,755). Applicants respectfully traverse.

Claims 1 and 32 have been amended to recite, for example according to claim 1,

wherein step 1 comprises gathering data about each modem through an initial ranging process and a registration process,

and wherein step 2 comprises dividing modems into logical groups by modem type as learned from said registration process with DOCSIS 1.0 modems in one logical group and DOCSIS 1.1 modems in another logical group and DOCSIS 2.0 modems in a third logical group operating in SCDMA mode only or ATDMA mode only.

These features are not disclosed on Hou. As best described in the Summary portion, the procedure in the Hou patent relates to enabling the CMTS to assign burst profiles mini-slot numbers to CMs according to the CMs' robustness level. The CM determines whether or not the CM is dynamic burst profile mode capable. If so, the CMTS assigns a burst profile based on performance measurements on the CM and grants the CM a number of mini-slots per the burst profile parameters and the CM's request. Otherwise, if the CM is not dynamic burst profile capable, the CMTS assigns a burst profile per the current DOCSIS specification and assigns a number of mini-slots per the CM's request. Importantly, there is no mention in Hou of "gathering data about each modem through an initial ranging process and a

registration process” (step 1), and “dividing modems into logical groups by modem type as learned from said registration process with DOCSIS 1.0 modems in one logical group and DOCSIS 1.1 modems in another logical group and DOCSIS 2.0 modems in a third logical group operating in SCDMA mode only or ATDMA mode only” (step 2). For these reasons at least, it is respectfully submitted that claim

It will be appreciated that according to the M.P.E.P., a claim is anticipated under 35 U.S.C. § 102 only if each and every claim element is found, either expressly or inherently described, in a single prior art reference.¹ The aforementioned reasons clearly indicate the contrary, and withdrawal of the 35 U.S.C. § 102 rejection based on Hou is respectfully urged.

Conclusion

In view of the preceding discussion, Applicant respectfully urge that the claims of the present application define patentable subject matter and should be passed to allowance.

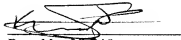
If the Examiner believes that a telephone call would help advance prosecution of the present invention, the Examiner is kindly invited to call the undersigned attorney at the number below.

¹ Manual of Patent Examining Procedure (MPEP) § 2131. See also *Verdegaall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

Please charge any additional required fees, including those necessary to obtain extensions of time to render timely the filing of the instant Amendment and/or Reply to Office Action, or credit any overpayment not otherwise credited to our deposit account no. 50-3557.

Respectfully submitted,
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Dated: May 4, 2009


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